

# GAUTENG PROVINCIAL LAWS GENERAL AMENDMENT BILL, 2020

Gauteng Provincial Legislature  
Oversight Committee on Premier's Office and Legislature  
3 November 2023



**GAUTENG**  
PROVINCIAL GOVERNMENT  
REPUBLIC OF SOUTH AFRICA

**GGT2030**  
GROWING GAUTENG TOGETHER



# OVERVIEW

- ❑ **PURPOSE**
- ❑ **BACKGROUND**
- ❑ **DISCUSSION**
- ❑ **CONCLUSION**
- ❑ **RECOMMENDATION**

## PURPOSE

- ❑ **To amend certain provisions of various pieces of founding provincial legislation that establishes public entities of the Gauteng Provincial Government.**
- ❑ **To rationalise the appointment, reappointment and dismissal or removal of members of boards and the hiring of chief executive officers of those provincial public entities.**
- ❑ **To provide for matters connected therewith or incidental thereto.**

## BACKGROUND

- ❑ **Report of the Presidential Review Committee on State-Owned Entities (2013): the appointment and removal of members of boards and chief executive officers of all state-owned enterprises should be done by the executive authority in concurrence or consultation with the Cabinet or the Executive Council.**
- ❑ **Resolution of the Executive Council dated 14 March 2018 confers (confirms) the power of the Executive Council to appoint members of the boards and chief executive officers of all public entities belonging to the Gauteng Provincial Government.**
- ❑ **National Guideline for the Appointment of Persons to Boards and as Chief Executive Officers of State-Owned and State-Controlled Institutions approved by Cabinet on March 2019 and adopted by the Executive Council on 5 February 2020.**

## BACKGROUND

- ❑ **Constitution of the Republic of South Africa, 1996, provides for Members of the Executive Council to be both collectively and individually accountable to the Provincial Legislature for the exercise of powers and the performance of functions of the Executive Council.**
- ❑ **Companies Act, 2008 (Act No. 71 of 2008) provides for the appointment or election and removal of the directors (members of boards) of state-owned companies by the shareholders of those companies.**
- ❑ **The Gauteng Provincial Government is the sole shareholder of the state-owned companies (provincial government business enterprises).**
- ❑ **The relevant Member of the Executive Council under whose parent provincial department the provincial government business enterprise falls merely acts as the representative of the shareholder, i.e., for and on behalf of the GPG.**

## DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<p><b>Appointment of members of governing bodies</b></p>	<p>Appointments of members of boards by the Executive Council (previously “responsible Member”, “MEC” or “responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs”)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 5 of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> Section 14(1) of Consumer Affairs (Unfair Business Practices) Act, 1996</li> <li><input type="checkbox"/> s5 read with s5A of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> Section 8(2) of Gauteng Growth and Development Agency (Proprietary) Limited Act, 2003</li> <li><input type="checkbox"/> Section 7(1) read with section 10 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> Section 10 of Gautrain Management Agency Act, 2006</li> <li><input type="checkbox"/> Sections 2 and 3 of Gauteng Liquor Act, 2014</li> </ul>

# DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<p><b>Termination of membership of governing bodies</b></p>	<p>Terminations of membership of boards by the Executive Council (previously “responsible Member”, “MEC” or “responsible Member in concurrence with the Standing Committee on Finance and Economic Affairs”)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 18B(7) of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> Section 13 of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> Section 9 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> Section 12 of Gautrain Management Agency Act, 2006</li> <li><input type="checkbox"/> Section 8 of Gauteng Liquor Act, 2014</li> </ul>

## DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<b>Suspension of membership of any member of a governing body</b>	Omission of the consultation with “the Standing Committee of the Provincial Legislature responsible for economic affairs” in relation to the suspension of the membership of a member of a governing body	<input type="checkbox"/> Section 8 of Gauteng Gambling Act, 1995
<b>Determination of the remuneration and allowances payable to members of governing bodies</b>	Determination of the remuneration and allowances payable to members of governing bodies, to be in consultation with, or with the concurrence of, the Member of the Executive Council for Finance	<input type="checkbox"/> Section 10 of Gauteng Gambling Act, 1995 <input type="checkbox"/> Section 14(8) of Consumer Affairs (Unfair Business Practices) Act, 1996 <input type="checkbox"/> Section 5D of Gauteng Tourism Act, 2001 <input type="checkbox"/> Section 10(4) of Gauteng Enterprise Propeller Act, 2005 <input type="checkbox"/> Section 7(3) of Gauteng Liquor Act, 2014



## DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<p><b>Determination of the terms and conditions of employment, including remuneration, allowances and other employment benefits, of the staff of public entities by governing bodies</b></p>	<p>Determination of the terms and conditions of employment (including remuneration, allowances and other employment benefits) of the staff of public entities to be in consultation with, or with the concurrence of, the Member of the Executive Council for Finance</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 12(3) of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> Section 11(2)(b) of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> Section 24 of Gauteng Enterprise Propeller Act, 2005</li> <li><input type="checkbox"/> Section 29 of Gautrain Management Agency Act, 2006</li> </ul>

## DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<p><b>Appointing an administrator to perform the functions or exercise the powers of the governing body</b></p>	<p>Appointment of an administrator to perform the functions and powers of the governing body after consultation with the Executive Council, i.e. requiring the approval of the Executive Council as opposed to the mere consultation</p>	<p><input type="checkbox"/> Section 18C(7) of Gauteng Gambling Act, 1995</p>
<p><b>Making regulations in terms of an enabling or principal Act</b></p>	<p>Removal of the requirement for the concurrence of the Standing Committee of the Provincial Legislature responsible for financial matters whenever the responsible Member of the Executive Council intends making regulations in terms of an enabling or principal Act</p>	<p><input type="checkbox"/> Section 84 of Gauteng Gambling Act, 1995</p> <p><input type="checkbox"/> Section 29 of Consumer Affairs (Unfair Business Practices) Act, 1996</p>

## DISCUSSION

Subject	Nature of Amendment	Enabling Legislation
<b>Appointment of a chief executive officer</b>	Approval of the Executive Council is required for the appointment of a chief executive officer rather than the responsible Member of the Executive Council	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 12(1)(a) of Gauteng Gambling Act, 1995</li> <li><input type="checkbox"/> Section 5(2) read with section 6(1) of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> Section 20(1) of Gauteng Enterprise Propeller Act, 2005</li> </ul>
<b>Suspension of chief executive officer</b>	Responsible Member may suspend the chief executive officer rather than terminate their employment	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 12A of Gambling Act, 1995</li> </ul>
<b>Termination of appointment of chief executive officer</b>	Termination of the appointment of a chief executive officer by the Executive Council	<ul style="list-style-type: none"> <li><input type="checkbox"/> Section 6(6) of Gauteng Tourism Act, 2001</li> <li><input type="checkbox"/> Section 22(3) of Gauteng Enterprise Propeller Act, 2005</li> </ul>

## CONCLUSION

- ❑ **There is currently no overarching legislation regulating the appointment or reappointment and dismissal or removal of members of boards and the hiring of chief executive officers of public entities, both in national and provincial spheres of government.**
- ❑ **The National Guideline takes no precedence over the provisions set out in the founding legislation relating to the establishment of public entities.**
- ❑ **Founding legislation is entity-specific and prevails over legislation of general application in line with common law principle.**
- ❑ **The Gauteng Provincial Laws General Amendment Bill was developed pursuant to the resolution of the Executive Council of 14 March 2018 as a temporary measure while the review of the rationalisation of provincial public entities was being undertaken.**
- ❑ **The resolution is reinforced by the National Guideline approved by Cabinet on March 2019 and adopted by the Executive Council on 5 February 2020.**

## CONCLUSION#2

- ❑ **The National Guideline contains detailed procedures and criteria on the appointment or reappointment and dismissal or removal of members of board and chief executive officers of public entities and government business enterprises.**
- ❑ **The inadequacies in the current legislative framework regulating the establishment and the functioning of public entities should be addressed for better accountability which is crucial for delivery and the broader transformation of the State.**
- ❑ **The adoption of the National Guideline on 15 March 2020 by the Executive Council catapult the National Guideline into a policy framework of the Gauteng Provincial Government on the appointment or reappointment and dismissal or removal of members of boards and chief executive officers of provincial public entities and provincial government business enterprises.**

## RECOMMENDATION

- ❑ **The Bill is meant to promote uniformity on the appointment or reappointment and dismissal or removal of members of boards and hiring of chief executive officers of provincial public entities based on best governance practices.**
- ❑ **It is therefore recommended that the Provincial Legislature supports and adopts the Gauteng Provincial Laws General Amendment Bill, 2020, as a temporary measure while the review on the rationalisation of provincial public entities is being undertaken.**

**“Bills are made to pass as razors are made to sell” - Lord Thring**  
**(founding First Parliamentary Counsel of the British Parliamentary Counsel Office when it was established in 1869 by a Treasury Minute)**